

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9

In the Matter of

CURWOOD, INC., A DIVISION OF  
BEMIS COMPANY, INC. <sup>1/</sup>

Employer

and

GRAPHIC COMMUNICATIONS UNION,  
FOX VALLEY LOCAL 77-P, AFL-CIO-CLC <sup>2/</sup>

Cases 9-RC-17407  
(Formerly 30-RC-6203)  
9-RC-17408  
(Formerly 30-RC-6204)

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, <sup>3/</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
3. The labor organization involved claims to represent certain employees of the Employer.

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<sup>1/</sup> The name of the Employer appears as amended at the hearing.

<sup>2/</sup> The name of the Petitioner appears as amended at the hearing.

<sup>3/</sup> The Employer and the Petitioner timely filed briefs which I have carefully considered in reaching my decision.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer, a corporation, is engaged in the manufacture of flexible film packaging products at several locations throughout the United States, including three facilities at Oshkosh, Wisconsin where it currently employs approximately 697 employees in the unit found appropriate. There is no history of collective bargaining affecting any of the employees at issue in this proceeding.

The Petitioner seeks to represent a unit comprised of all full-time production employees <sup>4/</sup> employed by the Employer at its Bemis Converter Film (BCF) and Bemis Specialty Film (BSF) facilities at Oshkosh, Wisconsin, excluding all maintenance, quality assurance and office clerical employees and all professional employees, guards and supervisors as defined in the Act. Although the Employer agrees that the employees sought by the Petitioner are properly included in any unit found appropriate, it maintains, contrary to the Petitioner, that the composition of the unit must be expanded to include maintenance and quality assurance employees. In addition, contrary to the Petitioner, the Employer contends that the scope of the unit must be expanded to include its Curwood Specialty Films (CSF) facility at Oshkosh.

BCF, BSF and CSF are all within the Employer's Curwood group and are the only manufacturing facilities located on the Employer's south campus at Oshkosh. These manufacturing facilities, together with related warehouses, offices and parking lots are enclosed by a security fence. The area enclosed by the fence is about 1875 feet from north to south, about 1680 feet from east to west and is referred to on the record as the "site." BSF is located about 400 feet to the north of BCF and the two facilities are connected by a warehouse which stores raw unfinished film produced by BCF. CSF is located about 425 feet to the east of BCF across a parking lot. BCF produces raw unfinished film. BSF and CSF obtain raw unfinished film and finish it through the processes of printing, coating, laminating and slitting. The only facilities located on the south campus outside the fence (site) are a Chamco warehouse and the Curwood corporate offices. <sup>5/</sup> The Chamco warehouse is the western most campus building located about 275 feet outside the fence. The Curwood corporate office is the eastern most campus building located about 125 feet outside the fence. A small office is located approximately in the center of

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<sup>4/</sup> The record clearly reflects that the parties intend the term "production employees" to include warehouse, material handling and truckdriving employees and that such employees should be included in any unit found appropriate. The parties stipulated that the part-time employees should be excluded from the unit. In this regard, the parties stipulated that the Employer employs part-time employees on a "very infrequent basis" and that the current part-time employees involve "unique situations." Thus, the parties stipulated that the part-time employees do not receive fringe benefits, do not have seniority and do not share a community of interest with the full-time employees. Under such circumstances, and in agreement with the stipulation of the parties, I shall exclude the part-time employees from the unit.

<sup>5/</sup> The parties stipulated, the record reflects and I find that the three warehouse employees at the Chamco warehouse do not share a sufficient community of interest with the site employees to warrant their inclusion in any unit found appropriate. There are no production, maintenance or quality assurance employees employed at the Curwood corporate offices.

the site and houses Curwood information technology and accounting functions and the corporate offices of Millprint, a Bemis company outside of the Curwood group. With the exception of the people working in this office, it appears that the work functions of the employees who work at the site are limited to on-site operations.

The Employer also operates manufacturing facilities on its north campus in Oshkosh. These north campus facilities include Curwood plants as well as Bemis plants outside the Curwood group. The record does not reflect the distances between the north and south campuses, but I draw the warranted inference that the distance would most appropriately be measured in miles as opposed to some shorter increment. The Employer also operates manufacturing plants outside of the Oshkosh area including Curwood and Bemis facilities outside the Curwood group. Neither party contends that any of these facilities should be included in the unit.

BCF, BSF and CSF, collectively referred to as the site plants, each has an operations manager in overall charge of production at the plant who is assisted by a number of statutory supervisors. The operations managers do not supervise the maintenance and quality assurance employees assigned to their plants. Tom Rossiter, BCF operations manager; Larry Nitzsche, BSF operations manager; Paul Luepke, maintenance manager; Audra Meade, human resources manager and Don Zaiki, technical support manager, <sup>6/</sup> report directly to Sam Smith, site director, who in turn reports to Tim Emenecker, Curwood senior vice-president of manufacturing. Emenecker's office is located in the Curwood corporate office on the south campus. Emenecker reports directly to Henry Theisen, Curwood's president. The record does not reflect the locations for the offices of Smith or Theisen.

Rick Michaletz, the CSF operations manager reports directly to Don Nimis, Curwood executive vice-president, who in turn reports to Theisen. The record does not disclose the location of Nimis' office. Thus, unlike the remainder of the site management team, <sup>7/</sup> Michaletz does not report up through Smith or Emenecker, but reports directly to Nimis who, according to the Employer's organizational charts, appears to be at the same management level as Emenecker. Theisen, the president of Curwood, is the lowest ranking Employer official who has supervisory authority over all employees at the site while the employees of BCF and BSF share common supervision two levels lower in the form of Smith.

Paul Luepke has overall supervisory responsibility for the site maintenance employees while Don Zaiki possesses such authority over all of the site quality assurance employees. Doug Vanderkelen, BCF maintenance supervisor reports directly to Luepke and supervises 24 maintenance employees assigned to BCF. Dick Theil, BSF maintenance manager also reports directly to Luepke and supervises 22 maintenance employees assigned to BSF and 4 maintenance employees assigned to CSF, which does not have a separate maintenance supervisor. Vanderkelen and Theil also supervise persons who neither party would include in

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<sup>6/</sup> Zaiki supervises the quality assurance supervisors and employees as well as the engineering and support functions.

<sup>7/</sup> The site management team, including Michaletz, meets weekly to discuss site operations and problems.

the unit. Zaiki directly supervises Doris Griesse, BCF QA supervisor, who in turn supervises about six QA employees assigned to BCF. Mark Green, BSF QA supervisor, reports directly to Zaiki and supervises about nine QA employees assigned to BSF and about four QA employees assigned to CSF, which does not have a QA supervisor. As noted above, production supervision does not directly supervise any of maintenance or quality assurance employees.<sup>8/</sup>

The raw unfinished film produced by BCF is moved to and stored in the warehouse connecting BCF and BSF. Approximately 70 percent of the product produced by BCF is provided to other Bemis facilities, including those located away from the site, while about 30 percent of it is sold to non-Bemis companies. The record reflects that raw film produced by BCF may be finished by BSF and CSF but does not indicate what percentage of film finished by them is produced at BCF.<sup>9/</sup>

The building in which CSF is housed was constructed as a new addition at the site sometime prior to 1997. Prior to its construction, BCF and BSF were the only manufacturing plants at the site. Thus, all raw film was produced at BCF while the film finishing was accomplished at BSF. Because Hostess/Frito-Lay, a customer of the Employer, desired a dedicated film finishing portion of the BSF operation, the Employer constructed the building in which CSF is housed. Employees and machinery were transferred from BSF to CSF during the period from December 15, 1997 to February 22, 1999 when CSF became fully staffed. During this period, there were 55 transfers of BSF production employees, 2 transfers of BSF maintenance employees, 4 transfers of BCF production employees and 2 transfers of BCF maintenance employees to CSF. There has been no transfers of CSF employees to BCF or BSF. All permanent transfers to CSF during this initial staffing period were accomplished through the Employer's merit based interview process, more fully described below. The initial staffing of CSF was accomplished solely through these transfers without filling CSF positions with newly hired employees. Because the Employer has lost some but not all of its business with Hostess/Frito-Lay, the CSF facility is no longer solely dedicated to Frito-Lay but currently finishes film for that company as well as other firms.

There are currently about 59 production, 4 maintenance and 4 quality assurance employees at CSF; about 334 production, 22 maintenance and 9 quality assurance employees at BSF and 285 production, 24 maintenance and 6 quality assurance employees at BCF.

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<sup>8/</sup> Because some maintenance employees work hours when maintenance supervision is not present and some QA employees work hours when QA supervision is not present, production supervision has the authority to send disruptive maintenance or QA employees home temporarily in emergency situations. In these circumstances, it is maintenance or quality assurance supervision which investigates and determines the discipline appropriate to the employee's disruptive behavior. This suggests that production supervision does not exercise independent judgment in temporarily removing maintenance and quality assurance employees from the plant and that they do not exercise supervisory authority over them. *Chevron Shipping Co.*, 317 NLRB 379, 381 (1995).

<sup>9/</sup> Logic would suggest that it would be more cost effective for BSF and CSF to obtain raw film from BCF than it would be to procure it from outside sources.

Audra Meade has final authority over all human resources functions at the site but she has no authority over anyone employed outside the site.<sup>10/</sup> Meade has final authority for site employees regarding hiring, discharge, discipline and promotions. The Employer publishes a wage schedule for each of the three plants at the site, but the record does not reflect how the wage schedules are established or whether Meade has any input. Benefits such as life, sickness and accident insurance and retirement are uniform site-wide but do not extend to persons beyond the site. Other site-wide benefit plans which are shared by persons beyond the site include medical, dental and property insurance, dependent care, savings and stock purchase. The record does not reflect how these benefits are established or how they may be changed. Work and safety rules apply site-wide and some of them are site specific while others apply to facilities away from the site. Except as noted below, the Employer's personnel policies apply site-wide.

All positions at CSF and all narrow web press,<sup>11/</sup> maintenance and quality assurance positions site-wide are interview positions which are filled based on employee merit. All production positions at BCF and BSF, except for narrow web press, are bid positions which are filled based on seniority. All vacancies in interview and bid positions are posted site-wide and all production, maintenance and quality assurance employees may apply for the interview positions or bid on the bid positions. Bid positions are filled first by the senior bidder currently working in the department of the vacancy, then by the senior bidder currently working in the plant where the vacancy is located and lastly by general workers and other employees on site. General workers are production employees assigned to a particular plant but not to a department within the plant. They are typically newly hired employees awaiting a chance to bid into a department. General workers have site-wide seniority and do not possess seniority in a particular plant or department. Seniority is not considered in selecting employees for interview positions and the Employer selects employees for these positions based solely on merit considerations. Thus, all employees on the site, without regard for their work location or seniority, have equal opportunity based on their past job performance to be selected for an interview position. With the exception of narrow web press, the unit sought by the Petitioner consists entirely of bid positions. All employees transferred to bid positions have the right within 30 days to retreat to the position they held prior to the transfer and the Employer retains the right to force such a retreat if it is not satisfied with the employee's performance in the new position. There are no such retreat rights for employees transferring into interview positions. These retreat rights, or lack thereof, are not affected by the position from which the employee transferred. Thus, an employee transferring from a bid position to an interview position has no retreat rights while an employee transferring from an interview position to a bid position has such rights.

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<sup>10/</sup> Meade does not become involved in human resource functions with respect to persons employed at the Curwood corporate office located on the south campus or at the Curwood/Millprint office located near the center of the site. Meade testified that she does become involved in human resource matters involving the three employees at the Chamco warehouse but that corporate is always involved in those matters as well, unlike matters involving site employees in which there is no corporate involvement.

<sup>11/</sup> The six current narrow web press positions are all production positions at BSF.

The Employer has established a separate wage schedule for each of the three plants at the site. The current wage schedules reflect that all maintenance employees and all production employees at BCF and BSF have a set starting rate and receive wage increases as their length of service in the position increases at intervals of 60 days, 6 months, 12 months, 18 months and 2 years. These raises are automatic as time in the position increases unless an employee's performance is poor. Employees are rarely denied these wage increases. All quality assurance and CSF production employees are paid a wage rate designated as one of five levels with level 5 being the highest. The Employer has established guidelines for granting these increases as an employee's time in the position increases, but movement from one level to the next is based on job performance. Four of the five machine operator classifications listed on the CSF wage schedule also appear on the BSF wage schedule. These four CSF classifications are paid the same wage rate as the BSF machine operators with level 1 corresponding to the BSF 60-day rate, level 2 corresponding to the BSF 6-month rate, level 3 corresponding to the BSF 12-month rate and level 5 corresponding to the BSF 2-year rate. The same correspondence between BSF and CSF wage rates also exists for the warehouse/material handler classification. Four of the five assistant machine operator positions listed on the CSF wage schedule also appear on the BSF schedule and with some slight variations as to timing, there is a correspondence between BSF and CSF wage rates for the assistants similar to that of the operators. The CSF and BSF wage schedules both contain make ready and roll wrap classifications with CSF level 2 the same as the BSF start rate, level 3 the same as the 60-day rate, level 4 the same as the 6-month rate and level 5 the same as the 12-month rate. There are two wage rates for BSF general workers which are the same as the level 1 and level 5 rates for CSF general workers. Pre-press operator and pre-press assistant are the only classifications at CSF which do not appear on the BSF wage schedule, but the pre-press operators and assistants are paid the same wage rates as the lower paid operators and assistants at BSF. Although the production classifications at BCF are different from those at BSF, both plants use the same wage rate amounts. The wage rates for maintenance employees at the three plants are identical. The maintenance I classification is the highest paid and is approximately 14 percent above the highest paid production employee based on the 24-month rate. The preventative maintenance I rate is equal to the highest paid production employee. Maintenance II, preventative maintenance II and roll grinder (maintenance) are paid less than the top machine operators but less than the lower machine operators and all of the assistant machine operators. The wages for quality assurance employees are identical at all three of the plants on site and are lower than machine operators but higher than assistant machine operators.

Most of the production, maintenance and quality assurance employees work 12 hour shifts beginning in the A.M. or P.M. at either 5:30 or 5:45. A few maintenance and quality assurance employees work day shifts of 8 hours. It appears that the decision as to whether a shift starts at 5:30 or 5:45 is made at the departmental level as are some other matters such as vacation scheduling.

Applicants for employment at the site do not apply for a position at any particular plant and from the applicants perspective, they may be assigned to any of the three plants. However, the Employer is normally aware of the plant for which it is soliciting applications. All applicants are required to undergo a basic measurement, math and reading skills examination. New employees assigned to BSF and BCF are placed in the general worker pool from which they may bid into

entry level positions within a department at those plants. At CSF, new employees are placed directly into entry level positions.

BSF and BCF employees use an electronic time clock where CSF employees record their work hours on time sheets. All maintenance, quality assurance and CSF employees may be required to work overtime. There is no mandatory overtime for BCF and BSF production employees. The BSF and BCF employees share the same productivity plan. The CFS employees have an experimental productivity plan which is somewhat different than the one at BSF and BCF.

Since the CSF plant became fully staffed in February 1999, there have been 18 permanent transfers between BSF and BCF, 1 permanent transfer between BCF and CSF and 4 permanent transfers between BSF and CSF. Permanently transferred employees retain their seniority for benefit and bid purposes as well as their clock numbers and personnel records, including discipline.

Since February 1999, there have been no temporary transfers among the three plants resulting from vacancies for employees temporarily on leave. The record reflects that there are currently two production employees at CSF who have been temporarily assigned to the BSF scheduling area <sup>12/</sup> on light duty. Two BCF production employees were temporarily reassigned to BSF scheduling for extended periods of time on light duty. In March 2000 a CSF employee was reassigned to BCF accounting on light duty for a week. The record indicates that employees are temporarily transferred among the three plants in order to balance manpower with the work load but it does not indicate the frequency, volume or duration of such transfers except that around late 1998, four CSF pre-press operators may have been involved in temporary transfers for training purposes. Within the past year, a BSF maintenance employee worked overtime at CSF and another has been assigned occasionally to work partial shifts at CSF, but the record does not reflect the frequency of such temporary transfers. The Employer attempts to fill temporary vacancies with general workers assigned to the plant where the vacancy is located. With rare exceptions, general workers are the only employees who may bid on temporary positions.

Each of the three plants has a maintenance shop. The record reflects that maintenance employees do electrical, mechanical, preventative and forklift maintenance, that they spend time welding and grinding in the maintenance shops and that they spend time on the production floor performing trouble shooting, preventative maintenance and breakdown maintenance on the production equipment. The record reflects that when maintenance employees work on production machinery, they have work related contact with production employees, but the nature and extent of such contact is unclear. The record reflects, however, that in such situations, it is the maintenance employee who performs the skilled work while the production employee merely lends assistance at the direction of the maintenance employee. The witnesses were unable to estimate the amount of time that maintenance employees spend in the maintenance shop as opposed to working on the production floor.

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<sup>12/</sup> The record does not reflect whether scheduling is a production, maintenance or quality assurance position.

The maintenance jobs are interview positions open to employees at all three plants and are awarded without regard to seniority. All applicants for maintenance positions are required to undergo an electrical/mechanical aptitude examination in addition to the basic pre-hire measurement, math and reading examination. Persons applying for production and quality assurance positions are not required to take any examination specific to the job for which they are applying. Transcript testimony does not reflect what qualifications, if any, are required of applicants for maintenance positions. However, a career opportunity posting and a help wanted advertisement for maintenance positions indicate that applicants are required to possess a degree or appropriate training in the electro-mechanical field and have 2 to 4 years of work experience in a manufacturing/industrial setting, preferably in maintenance. These documents also reflect that maintenance applicants are expected to possess knowledge of machine controls, motor controllers, PLCs, pumps and mechanical drive systems and the ability to troubleshoot electrical and mechanical systems using electrical and mechanical diagrams, meters and gauges. The duties of the maintenance employees is described in these documents as troubleshooting, maintaining and repairing electrical, mechanical and all other plant equipment, performance of preventative maintenance, purchase and inventory of spare parts and assisting outside contractors.

The record does not reflect how many employees entering the maintenance department were transferred from production or quality assurance positions at the site as opposed to those who were hired directly into the maintenance from the outside. Since 1995, there have been five permanent transfers from on-site production positions to the maintenance department. There has not been any permanent transfers from maintenance to production and no permanent transfers between maintenance and quality assurance. There are no temporary transfers into or out of maintenance.

Quality assurance, like maintenance, are all interview positions. However, applicants for quality assurance do not have to undergo any examination for that position beyond the basic pre-employment examination. There are no minimum educational or experience qualifications for quality assurance positions. Neither party contends that the quality assurance employees are professional or technical employees.

The career opportunity postings and job description for the quality assurance employees indicate that they perform and document in-process and sales quality testing on production output; maintain hold ticket systems including identification, labeling and disposition; maintain testing data files; maintain retained sample collection, storage and control and perform simple repairs on lab equipment. Production employees transport samples to the quality assurance lab for testing and may have contact with quality assurance employees in the process. Quality assurance employees speak with production employees on the production floor to discuss quality issues and to adjust quality problems. The record does not reflect the frequency or duration of such contact between production and quality assurance employees nor the amount of time quality assurance employees spend in the lab as opposed to the production floor. Since 1995, there have been three permanent transfers from production to quality assurance and no permanent transfers from quality assurance to production. There have been no permanent transfers between quality assurance and maintenance. There are no temporary transfers into or out of quality assurance.



Career opportunity postings reflect that production employees, like the quality assurance employees, are not required to possess any minimum educational or experience qualifications and they are not required to undergo any examination specific to their position beyond the basic pre-employment examination applicable to employees. These documents also indicate that production employees are primarily responsible for operating and cleaning production machinery and performing other tasks to further the production process.

#### ANALYSIS:

Section 9(a) of the Act only requires that a unit sought by a petitioning labor organization be an appropriate unit for purposes of collective bargaining and there is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit or even the most appropriate unit. *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950). Moreover, the unit sought by the petitioning labor organization is always a relevant consideration and a union is not required to seek representation in the most comprehensive grouping of employees unless an appropriate unit compatible to that requested does not exist. *Overnite Transportation Co.*, 322 NLRB No. 122 (1996); *Purity Food Stores*, 160 NLRB 651 (1966). Although other combinations of the Employer's employees may also be appropriate for collective bargaining, I need only determine whether the employees sought by the Petitioner constitute an appropriate unit and, as previously noted, there is no history of collective bargaining which might affect my determinations as to the scope or the composition of the unit.

#### UNIT SCOPE:

In determining whether a petitioned-for multifacility unit is appropriate, the Board evaluates the following factors: employees' skills and duties; terms and conditions of employment; employee interchange; functional integration; geographic proximity; centralized control of management and supervision and bargaining history. *Alamo Rent-A-Car*, 330 NLRB No. 147 (2000). In *Alamo*, the Board analyzed whether there was any greater link, in terms of these factors, between the two petitioned-for locations than there were among the four facilities which the employer contended constitute the only appropriate unit. The Board noted that the petitioned-for two facility unit did not conform to any administrative function or grouping of the employer's operations and that the two facilities sought by the petitioner were not linked to a substantially greater extent than the four facilities as a whole. Thus, the Board found that a unit limited to the two facilities was not appropriate.

In the instant case, the geographic proximity, with BCF, BSF and CSF all being within short walking distance of each other and surrounded by a single fence, is perhaps the strongest indicator that the three facilities are seen by all concerned as comprising a single work place. The centralized control of the human resources function limited to these three facilities as well as a site-wide seniority system are other strong indicators of their commonality. The evidence strongly suggests that the two facility unit sought by the Petitioner does not conform to any administrative grouping of the Employer's operations while the three facility unit urged by the Employer constitutes an administrative grouping.

Employees' skills across all three facilities are essentially the same, although they may differ among production, maintenance and quality assurance employees within a particular facility. Thus, the production employees at all three facilities operate machinery. Indeed, there is a greater similarity of duties between production employees at BSF and CSF, who finish film on machines and are assigned to almost identical job classifications, than there is between those film finishing employees and the employees at BCF who produce raw film using different kinds of machinery in different job classifications. Because raw film flows from BCF to BSF or CSF, there is a degree of functional integration between the raw film producer (BCF) and the film finishers (BSF and CSF) that does not exist between the two film finishers, CSF and BSF.

Regarding terms and conditions of employment, the various wage rates set forth in the wage schedules for all three facilities are the same. Discipline, benefits, working hours<sup>13/</sup> and most other personnel matters are applied uniformly among all three facilities. However, production employees at CSF are treated differently from production employees at BCF and BSF in such areas as promotion (interview versus bid); retreat rights (none versus 30 days); overtime (mandatory versus not); time recording (electronic versus time sheet) and productivity sharing programs. At CSF, production employees are supervised separately from those at BCF and BSF while the maintenance and quality assurance employees at CSF are supervised by BSF supervisors.

Although there were a substantial number of permanent transfers of employees between BCF/BSF and CSF during the period that CSF was being brought up to full staffing, I note that such interchange to a new facility is not viewed by the Board as being significant. *J. L. Hudson Co.*, 155 NLRB 1345, 1348 fn. 9. Since CSF became fully staffed, the number of permanent transfers between BSF and BCF has been substantially greater than the number of permanent transfers from either of those facilities to CSF. It should be noted, however, that CSF is a much smaller facility in terms of manpower and that a smaller number of permanent transfers involving that facility does not necessarily reflect a lesser degree of interchange. In any event, permanent transfers are considered to be less indicative of interchange than temporary ones. *Red Lobster*, 300 NLRB 908, 911 (1990). The evidence regarding temporary transfers is insufficiently specific to permit me to draw any conclusions regarding their affect on the degree of interchange. Accordingly, the evidence does not establish that the degree of employee interchange between BSF and BCF is substantially greater than that involving CSF.

In view of the close geographic proximity; the centralized control of human resources; the similarity in wages, job duties and skills, discipline, working hours and benefits; the common seniority system and the integration of operations; I conclude that the exclusion of the CSF facility from the multi-facility unit sought by the Petitioner renders the petitioned-for unit inappropriate and that the smallest appropriate unit, which would include the employees at the two facilities sought by the Petitioner, must include all three facilities at the site. Unlike a situation where a labor organization seeks to represent a single facility unit, there is no presumption that two or more facilities of an employer's operation is appropriate for collective

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<sup>13/</sup> I do not regard a 15-minute difference in shift starting time to be of any significance.

bargaining. Here, the factors weighing in favor of the three facility unit far outweigh the factors which might militate in favor of the petitioned-for two facility unit.

*Overnite Transportation Company*, supra., relied upon by the Petitioner, is inapposite. In *Overnite*, the Board was merely called upon to decide whether the exclusion of mechanics from a unit of drivers and dock workers at a single facility rendered inappropriate the petitioned-for unit. Thus, *Overnite* involved an issue of unit composition rather than the scope of the unit.

#### UNIT COMPOSITION:

The Petitioner seeks a unit limited to production employees while the Employer contends that the appropriate unit must also include quality assurance and maintenance employees. In arriving at my decision on this issue, I need only be concerned with whether a unit limited to production employees is appropriate. The fact that the broader unit urged by the Employer may also be appropriate does not render a unit compatible with the one sought by the Petitioner inappropriate. *Overnite*, supra. In deciding whether a unit of drivers and dock workers, excluding mechanics was appropriate, the Board, in *Overnite*, considered whether the mechanics could constitute a separate appropriate unit. Upon finding that the mechanics could constitute a separate unit, the Board concluded that the mechanics did not share such a close community of interest with the drivers and dock workers to require their inclusion in the unit sought by the petitioner. Thus, in the instant matter, to determine whether the production unit sought by the Petitioner is appropriate, I must decide whether the maintenance or quality assurance employees could constitute a separate appropriate unit or whether their community of interest is closely aligned with the production employees to mandate their inclusion in the same unit.

#### Maintenance Employees:

In determining whether maintenance employees possess a sufficient community of interest apart from production employees to warrant their representation in a separate unit, the Board examines such factors as mutuality of interest in wages, hours and working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees and functional integration. *Capri Sun, Inc.*, 330 NLRB No. 158 (2000). In the instant matter, the maintenance employees are at the top of the Employer's wage scale with the highest paid maintenance employee receiving about 14 percent more than the highest paid production employees.<sup>14/</sup> The hours and working conditions of the maintenance employees are similar to those of production employees. However, the maintenance employees have their own department and are supervised separately from production employees. The fact that maintenance employees are required to pass an electrical/mechanical aptitude examination and must possess training in that field as well as maintenance experience demonstrates that they are required to possess skills that are not required of production employees. The functions of the maintenance employees in maintaining and repairing production machinery are different from and not functionally integrated with the

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<sup>14/</sup> See, *Capri Sun*, supra, where maintenance employees received from 7 percent to 20 percent more than production employees.

production employees' operation of the machinery for production purposes. The infrequent permanent and complete lack of temporary transfers between production and maintenance employees demonstrates minimal interchange between the two groups. The record does not reflect the frequency of contact between the two groups.

Having carefully considered the record evidence and the arguments of the parties at the hearing and in their briefs, I conclude that the differences in wages, supervision, skills and job functions, as well as the lack of interchange and functional integration between the maintenance employees and the Employer's other employees, are sufficient to establish that the maintenance employees could constitute a separate appropriate unit. Under such circumstances, their inclusion in the production employee unit sought by the Petitioner is not required. *Capri Sun*, supra; *Ore-Ida Foods*, 313 NLRB 1016 (1994). Although the record does not reflect the frequency of contact between the groups, I find that this factor, even if contact were very frequent, would not overcome the impact of the other circumstances described above which establish that a separate maintenance unit would be appropriate. Accordingly, I find that the maintenance employees do not show such a community of interest with the production employees to mandate their inclusion in the same unit. I shall, therefore, exclude the maintenance employees from the unit.

The cases relied upon by the Employer in support of its position are inapposite. In *Shelburne Shirt Co.*, 86 NLRB 1308 (1948); *United Butchers Abattoir, Inc.*, 123 NLRB 946 (1959) and *The Garin Co.*, 148 NLRB 1499 (1964); the petitioner sought a combined production and maintenance unit which the Board found appropriate. Those cases did not raise the issue of whether a production unit excluding maintenance employees might also be appropriate. Similarly, in *Florence Manufacturing Company*, 92 NLRB 185 (1950); *Comfort Slipper Corporation*, 111 NLRB 188 (1955) and *Central Coat, Apron & Linen Service, Inc.*, 126 NLRB 958; the labor organizations sought to exclude maintenance employees from production units on the basis that they did not represent maintenance employees in general and that maintenance employees were outside of their jurisdictions. The Board rejected these considerations as being irrelevant to its unit determinations and found that the petitioners had failed to advance any cogent reason, based on community of interest considerations, for excluding maintenance employees. Thus, the Board determined that combined production and maintenance units were appropriate. Here, the Petitioner, unlike the situations relied upon by the Employer, specifically contends that the maintenance employees enjoy a separate community of interest sufficient to warrant their exclusion from the unit. Under these circumstances, excluding the maintenance employees from the unit sought is appropriate.

#### Quality Assurance Employees:

Like the maintenance employees, I must determine whether the quality assurance employees could constitute a separate appropriate unit or above such a separate community of interest to justify excluding them from the unit. The quality assurance employees, like the maintenance employees, are separately supervised. Like the maintenance employees, they perform different job functions from production employees. However, unlike maintenance employees, the quality assurance employees' wage rates are typical of those of the production employees, they are not required to undergo any examination specific to their job function, are

not required to possess a minimum level of education or experience and their duties are functionally integrated with the production process by virtue of their testing of production output. *Owens-Illinois, Inc.*, 211 NLRB 939, 941 (1974). Given this similarity in the wages, hours, working conditions and skills between quality assurance and production employees as well as their functional relationship to the production process, I find that the quality assurance employees do not constitute a separate appropriate unit. There is no contention that the quality assurance employees are technical or professional employees or that their community of interest is more closely aligned with the maintenance or office clerical employees than with the production employees. Inasmuch as the record reflects that the quality assurance employees' interests, by virtue of their wage rates, skill level and functional relationship to the production process, lie more closely with the production employees than with other employees and as they do not constitute a separate unit,<sup>15</sup> I find that they must be included in the unit with the production employees. *Blue Grass Industries, Inc.*, 287 NLRB 274, 276 fn. 10 (1987); *W. R. Grace & Co.*, 202 NLRB 788 (1973).

*Beatrice Foods Co.*, 222 NLRB 883, relied upon by the Petitioner, is distinguishable. In that case, the quality control supervisor, rather than the quality control employees, had contact with production employees to obtain samples and correct production problems. The quality control employees here have substantial contact with production employees. Moreover, the Board in *Beatrice*, did not analyze whether the quality control employees could constitute a separate appropriate unit.

#### CONCLUSION:

Based on the foregoing, the record as a whole and careful consideration of the arguments of the parties at the hearing and in the briefs, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

**All full-time production employees, including quality assurance employees, warehouse employees, truck drivers and general workers employed by the Employer at its Bemis Converter Films, Bemis Specialty Films and Curwood Specialty Films facilities at Oshkosh, Wisconsin, but excluding all part-time employees, maintenance employees, office clerical employees and all professional employees, guards and supervisors as defined in the Act.**

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<sup>15</sup>/ The record does not disclose the existence of any other group of employees with whom the quality assurance employees might be included in an appropriate unit.

Accordingly, I shall direct an election among the employees in such unit. <sup>16/</sup>

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Regional Director of Region 30 among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Graphic Communications Union, Fox Valley Local 77-P, AFL-CIO-CLC**.

### **LIST OF ELIGIBLE VOTERS**

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters using full names, not initials, and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB No. 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director for Region 30 who shall make the list available to all parties to the election subject to the Petitioner's submission of an adequate showing of interest. In order to be timely filed, such list must be received in Region 30, National Labor Relations Board, 310 West Wisconsin Avenue, Suite 700, Milwaukee, Wisconsin 53203-2211, on or before **June 26, 2000**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

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<sup>16/</sup> As the unit found appropriate is larger than that requested, the Petitioner, in the event that it does not wish to proceed to an election in the broader unit, may withdraw its petition without prejudice within 7 days of this decision by notifying the Regional Director of Region 30.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **July 3, 2000**.

Dated at Cincinnati, Ohio this 20<sup>th</sup> day of June 2000.

*/s/ Richard L. Ahearn*

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